

ORIGINAL

OPEN MEETING

MEMORANDUM

Arizona Corporation Commission

DOCKETED

DEC - 2 2009

DOCKETED BY



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RECEIVED

2009 DEC -2 P 3: 05

AZ CORP COMMISSION
DOCKET CONTROL

TO: THE COMMISSION

FROM: Utilities Division

DATE: December 2, 2009

RE: SOLARCITY CORPORATION - APPLICATION FOR A DETERMINATION THAT WHEN IT PROVIDES SOLAR SERVICE TO ARIZONA SCHOOLS, GOVERNMENTS, AND NON-PROFIT ENTITIES IT IS NOT ACTING AS A PUBLIC SERVICE CORPORATION PURSUANT TO ART. 15, SECTION 2 OF THE ARIZONA CONSTITUTION (DOCKET NO. E-20690A-09-0346)

BACKGROUND

On July 2, 2009, SolarCity Corporation ("SolarCity" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for a determination that it is not acting as a public service corporation when it provides certain specific electric services to Arizona schools, governments, and non-profit entities ("Application"). The Application requested expedited consideration of two specific Solar Service Agreements ("SSAs" or "Agreements") that it has entered with the Scottsdale Unified School District ("School District"). The affected schools are Coronado High School, which is located at 2501 North 74th Street in Scottsdale, and Desert Mountain High School, located at 12575 East Via Linda in Scottsdale. Coronado High School is located within the Salt River Project ("SRP") service territory. Desert Mountain High School is located within the Arizona Public Service Company ("APS") service territory.

In order to allow SolarCity to take advantage of federal stimulus funding, a two-part procedure for processing the Application has been used. This procedure has allowed the Commission to issue "preliminary relief" through Decision No. 71277 (September 17, 2009). The first step involved review and evaluation of the rates set forth in the Agreements as special contract rates ("Track 1") for the purpose of positioning the Company to move forward pending the completion of the adjudication proceeding.

The adjudication proceeding ("Track 2") is the second step of the procedure. The adjudication proceeding is designed to address SolarCity's arguments that it is not acting as a Public Service Corporation with respect to its provision of service to the School District. This two-step procedure is meant not only to provide a means by which SolarCity can proceed with the projects identified in the Application, but also to allow an adequate evidentiary record for consideration of the issue of whether SolarCity is acting as a public service corporation through Track 2. Decision No. 71277 recognizes that Track 1 (evaluation of the rates set forth in the

agreements as special contract rates) does not prejudice any party from asserting that SolarCity Corporation is not a public service corporation in the adjudication proceeding in Track 2.

SolarCity and the Scottsdale Unified School District have entered into the two SSAs for the Coronado High School and Desert Mountain High School projects. According to the agreements, the costs to provide and install the photovoltaic ("PV") systems would be borne by SolarCity, and the School District would receive energy produced by the systems for a period of fifteen years at a contract rate of \$0.11 per kWh. SolarCity would retain ownership of the PV equipment.

Decision No. 71277 approved a rate of \$0.11 per kWh for Desert Mountain High School Solar Service Agreement and the Coronado High School Solar Service Agreement and further established that this rate may be adjusted upward to a maximum of \$0.1424 per kWh, pursuant to the Solar Service Agreement's rebate-variance provision.

REQUEST FOR CHANGE OF RATE

On October 22, 2009, SolarCity filed a letter in the docket seeking to decrease the lower end of the approved rate range from \$0.11 per kWh to \$0.09 per kWh. In the letter, SolarCity states that "[u]nder A.R.S. § 40-252 the Commission has the ability on its own accord to modify and amend Orders after notice to the impacted parties and a chance to be heard." On November 12, 2009, SolarCity filed a second letter in the docket related to this request. The second letter acknowledged that SolarCity had made its previous request pursuant to A.R.S. § 40-252, but also asked that the Commission not interpret its previous request under A.R.S. § 40-252 as a limit to the means by which the Commission could resolve this issue and approve a new rate.

In response to SolarCity's November 12th filing, intervenor SunPower Corporation filed a letter dated November 13, 2009 that expressed interest in the means used to provide the relief requested by SolarCity. Staff responded to that letter, noting that requests to change rates do not usually implicate A.R.S. § 40-252.

Staff recognizes the importance of providing timely relief in order for SolarCity to take advantage of federal stimulus funding. Although SolarCity initially filed its request pursuant to A.R.S. § 40-252, Staff believes that it is appropriate to treat this request as a request to change rates. Staff would point out that the standard process used by the Commission when modifying orders under A.R.S. § 40-252 typically involves two separate Commission votes, one to permit re-examination of the order and a second to approve or deny recommended modifications. This procedure would appear to be unnecessary and impractical in the context presented by SolarCity's relatively simple request, which is in the nature of a prospective change to its rates. In light of the interest in timely relief that prompted bifurcation of the process into two tracks, Staff believes that it is appropriate to process this matter as a rate change.

In the event that the Commission (or any party) prefers to process this matter under A.R.S. § 40-252, Staff recommends that the Commission reopen Decision No. 71277 and grant the rate relief requested by SolarCity (decrease lower end of range from \$0.11/kWh to \$0.09/kWh).

FAIR VALUE ANALYSIS

Staff also considered the fair value implications of this matter. In connection with Decision No. 71277, Staff obtained information from SolarCity indicating that an estimated fair value for the assets to be used to serve the School District would be approximately \$8.4 million at the end of the first twelve months of operation. This information is suitable to use for evaluating SolarCity's current rate request. While Staff considered the fair value information submitted by SolarCity, this information should not be given substantial weight in this analysis. The rates contained in the SSA are heavily influenced by the availability of stimulus funds, other federal incentives, utility rebates, and certain market conditions. Staff believes that the proposed \$0.09 per kWh rate minimum compares favorably to the rates the School District would otherwise pay and, under the circumstances presented herein, the proposed rate range of \$0.09 per kWh to \$0.1424 per kWh is just and reasonable.

Staff recommends approval of the proposed SSA rate range as special contract rates between SolarCity and the School District for solar facilities at Coronado High School and Desert Mountain High School in order to provide a means for the School District and SolarCity to move forward with these projects.

Based on Staff's analysis, the School District would realize a cost-benefit at a price up to \$0.1424. As the School District has determined that its highest rate threshold is \$0.11 per kWh, Staff recommends that a rate range of \$0.09 per kWh to \$0.1424 per kWh for the Desert Mountain High School and Coronado High School SSAs be approved.

STAFF RECOMMENDATIONS

Staff recommends that the rate range proposed for the Solar Service Agreements between SolarCity Corporation and the Scottsdale Unified School District for photovoltaic projects at Coronado High School and Desert Mountain High School be approved as special contract rates as discussed herein for the purpose of positioning the Company to move forward pending the completion of the adjudication proceeding.

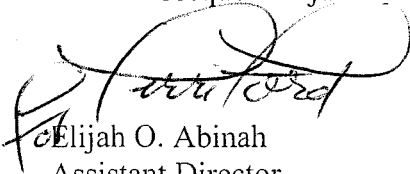
Staff recommends that a rate of \$0.09 per kWh for the Desert Mountain High School Solar Service Agreement and the Coronado High School Solar Service Agreement be approved and that this rate may be adjusted upward to a maximum of \$0.1424 per kWh, pursuant to the Solar Service Agreement's rebate-variance provision as Staff's analysis indicates cost savings to the School District within this range and in order to accommodate SolarCity's request to provide the lower \$0.09 per kWh rate.

THE COMMISSION

December 2, 2009

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Staff recommends that Commission approval by this Order does not prejudice any party in the subsequent adjudication proceeding in Track 2.

A handwritten signature in black ink, appearing to read "E. Abinah", is written over the printed name.

Elijah O. Abinah
Assistant Director
Utilities Division

EOA:SPI:lhmvJFW

ORIGINATOR: Steve Irvine

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 KRISTIN K. MAYES

Chairman

3 GARY PIERCE

Commissioner

4 PAUL NEWMAN

Commissioner

5 SANDRA D. KENNEDY

Commissioner

6 BOB STUMP

Commissioner

7
8 IN THE MATTER OF SOLARCITY
9 CORPORATION FOR A DETERMINATION
10 THAT WHEN IT PROVIDES SOLAR
11 SERVICE TO ARIZONA SCHOOLS,
12 GOVERNMENTS, AND NON-PROFIT
13 ENTITIES IT IS NOT ACTING AS A
PUBLIC SERVICE CORPORATION
PURSUANT TO ART. 15, SECTION 2 OF
THE ARIZONA CONSTITUTION

DOCKET NO. E-20690A-09-0346

DECISION NO. _____

ORDER

14 Open Meeting
15 December 15 and 16, 2009
16 Phoenix, Arizona

17 BY THE COMMISSION:

FINDINGS OF FACT

18 **A. BACKGROUND**

19 1. On July 2, 2009, SolarCity Corporation ("SolarCity" or "Company") filed with the
20 Arizona Corporation Commission ("Commission") an application for a determination that it is not
21 acting as a public service corporation when it provides certain specific electric services to Arizona
22 schools, governments, and non-profit entities ("Application"). The Application requested
23 expedited consideration of two specific Solar Service Agreements ("SSAs" or "Agreements") that
24 it has entered with the Scottsdale Unified School District ("School District"). The affected schools
25 are Coronado High School, which is located at 2501 North 74th Street in Scottsdale, and Desert
26 Mountain High School, located at 12575 East Via Linda in Scottsdale. Coronado High School is
27 located within the Salt River Project ("SRP") service territory. Desert Mountain High School is
28 located within the Arizona Public Service Company ("APS") service territory.

1 2. In order to allow SolarCity to take advantage of federal stimulus funding, a two-part
2 procedure for processing the Application has been used. This procedure has allowed the
3 Commission to issue "preliminary relief" through Decision No. 71277 (September 17, 2009). The
4 first step involved review and evaluation of the rates set forth in the Agreements as special contract
5 rates ("Track 1") for the purpose of positioning the Company to move forward pending the
6 completion of the adjudication proceeding.

7 3. The adjudication proceeding ("Track 2") is the second step of the procedure. The
8 adjudication proceeding is designed to address SolarCity's arguments that it is not acting as a
9 Public Service Corporation with respect to its provision of service to the School District.

10 4. This two-step procedure is meant not only to provide a means by which SolarCity
11 can proceed with the projects identified in the Application, but also to allow an adequate
12 evidentiary record for consideration of the issue of whether SolarCity is acting as a public service
13 corporation through Track 2. Decision No. 71277 recognizes that Track 1 (evaluation of the rates
14 set forth in the agreements as special contract rates) does not prejudice any party from asserting
15 that SolarCity Corporation is not a public service corporation in the adjudication proceeding in
16 Track 2.

17 5. SolarCity and the Scottsdale Unified School District have entered into the two
18 SSAs for the Coronado High School and Desert Mountain High School projects.

19 6. According to the agreements, the costs to provide and install the photovoltaic
20 ("PV") systems would be borne by SolarCity, and the School District would receive energy
21 produced by the systems for a period of fifteen years at a contract rate of \$0.11 per kWh.
22 SolarCity would retain ownership of the PV equipment.

23 7. Decision No. 71277 approved a rate of \$0.11 per kWh for Desert Mountain High
24 School Solar Service Agreement and the Coronado High School Solar Service Agreement and
25 further established that this rate may be adjusted upward to a maximum of \$0.1424 per kWh,
26 pursuant to the Solar Service Agreement's rebate-variance provision.

27 ...

28 ...

1 **B. REQUEST FOR CHANGE OF RATE**

2 8. On October 22, 2009, SolarCity filed a letter in the docket seeking to decrease the
3 lower end of the approved rate range from \$0.11 per kWh to \$0.09 per kWh.

4 9. In the letter, SolarCity states that “[u]nder A.R.S. § 40-252 the Commission has the
5 ability on its own accord to modify and amend Orders after notice to the impacted parties and a
6 chance to be heard.”

7 10. On November 12, 2009, SolarCity filed a second letter in the docket related to this
8 request. The second letter acknowledged that SolarCity had made its previous request pursuant to
9 A.R.S. § 40-252, but also asked that the Commission not interpret its previous request under
10 A.R.S. § 40-252 as a limit to the means by which the Commission could resolve this issue and
11 approve a new rate.

12 11. In response to SolarCity’s November 12th filing, intervener SunPower Corporation
13 filed a letter dated November 13, 2009 that expressed interest in the means used to provide the
14 relief requested by SolarCity. Staff responded to that letter, noting that requests to change rates do
15 not usually implicate A.R.S. § 40-252.

16 12. Staff recognizes the importance of providing timely relief in order for SolarCity to
17 take advantage of federal stimulus funding. Although SolarCity initially filed its request pursuant
18 to A.R.S. § 40-252, Staff believes that it is appropriate to treat this request as a request to change
19 rates. Staff would point out that the standard process used by the Commission when modifying
20 orders under A.R.S. §40-252 typically involves two separate Commission votes, one to permit re-
21 examination of the order and a second to approve or deny recommended modifications. This
22 procedure would appear to be unnecessary and impractical in the context presented by SolarCity’s
23 relatively simple request, which is in the nature of a prospective change to its rates. In light of the
24 interest in timely relief that prompted bifurcation of the process into two tracks, Staff believes that
25 it is appropriate to process this matter as a rate change.

26 13. In the event that the Commission (or any party) prefers to process this matter under
27 A.R.S. § 40-252, Staff recommends that the Commission reopen Decision No. 71277 and grant the
28 rate relief requested by SolarCity (decrease lower end of range from \$0.11/kWh to \$0.09/kWh).

C. FAIR VALUE ANALYSIS

14. Staff also considered the fair value implications of this matter. In connection with Decision No. 71277, Staff obtained information from SolarCity indicating that an estimated fair value for the assets to be used to serve the School District would be approximately \$8.4 million at the end of the first twelve months of operation. This information is suitable to use for evaluating SolarCity's current rate request. While Staff considered the fair value information submitted by SolarCity, this information should not be given substantial weight in this analysis. The rates contained in the SSA are heavily influenced by the availability of stimulus funds, other federal incentives, utility rebates, and certain market conditions. Staff believes that the proposed \$0.09 per kWh rate minimum compares favorably to the rates the School District would otherwise pay and, under the circumstances presented herein, the proposed rate range of \$0.09 per kWh to \$0.1424 per kWh is just and reasonable.

15. Staff recommends approval of the proposed SSA rate range as special contract rates between SolarCity and the School District for solar facilities at Coronado High School and Desert Mountain High School in order to provide a means for the School District and SolarCity to move forward with these projects.

16. Based on Staff's analysis, the School District would realize a cost-benefit at a price up to \$0.1424. As the School District has determined that its highest rate threshold is \$0.11 per kWh, Staff recommends that a rate range of \$0.09 per kWh to \$0.1424 per kWh for the Desert Mountain High School and Coronado High School SSAs be approved.

D. STAFF RECOMMENDATIONS

17. Staff recommends that the rate range proposed for the Solar Service Agreements between SolarCity Corporation and the Scottsdale Unified School District for photovoltaic projects at Coronado High School and Desert Mountain High School be approved as special contract rates as discussed herein for the purpose of positioning the Company to move forward pending the completion of the adjudication proceeding. Staff recommends that a rate of \$0.09 per kWh for the Desert Mountain High School Solar Service Agreement and the Coronado High School Solar Service Agreement be approved and that this rate may be adjusted upward to a maximum of

1 \$0.1424 per kWh, pursuant to the Solar Service Agreement's rebate-variance provision, as Staff's
2 analysis indicates cost savings to the School District within this range and in order to
3 accommodate SolarCity's request to provide the lower \$0.09 per kWh rate.

4 18. Staff recommends that Commission approval by this Order does not prejudice any
5 party in the subsequent adjudication proceeding in Track 2.

6 CONCLUSIONS OF LAW

7 1. The Commission, having reviewed the Application and Staff's Memorandum dated
8 December 2, 2009, concludes that it is in the public interest to extend preliminary relief to
9 SolarCity and the Scottsdale Unified School District while determination of whether SolarCity is a
10 public service corporation remains open pending future determination of that issue in Track 2 of
11 this docket.

12 2. The Commission's findings made herein are without prejudice to the Applicant's
13 and other parties' positions in Track 2 of this Docket.

14 3. The Commission, having reviewed SolarCity's letters of October 22, 2009 and
15 November 12, 2009, and Staff's Memorandum dated December 2, 2009, concludes that it is in the
16 public interest to adjust the special contract rate range while the determination of whether
17 SolarCity Corporation is an Arizona public service corporation remains open pending a future
18 determination in this Docket.

19 ORDER

20 IT IS THEREFORE ORDERED that the rate range proposed for the Solar Service
21 Agreements between SolarCity Corporation and the Scottsdale Unified School District for
22 photovoltaic projects at Coronado High School and Desert Mountain High School be and hereby
23 are approved as special contract rates as discussed herein.

24 IT IS FURTHER ORDERED that a rate of \$0.09 per kWh for the Desert Mountain High
25 School Solar Service Agreement and the Coronado High School Solar Service Agreement be
26 approved and that this rate may be adjusted upward to a maximum of \$0.1424 per kWh, pursuant
27 to the Solar Service Agreement's rebate-variance provision.

28 ...

1 IT IS FURTHER ORDERED that Commission approval by this Order does not prejudice
2 any party in the subsequent adjudication proceeding in Track 2.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4
5 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**
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8 CHAIRMAN

COMMISSIONER

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11 COMMISSIONER

COMMISSIONER

COMMISSIONER

12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto, set my hand and caused the official seal of
15 this Commission to be affixed at the Capitol, in the City of
16 Phoenix, this _____ day of _____, 2009.

17 _____
18 ERNEST G. JOHNSON
19 EXECUTIVE DIRECTOR

20 DISSENT: _____

21 DISSENT: _____

22 EOA:SPI:lhv\JFW
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SERVICE LIST FOR: SolarCity Corporation
DOCKET NO. E-20690A-09-0346

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